

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X-----X

JUAN CARLOS ARAUZ DELGADO, JEAN CARLOS
ARAUZ CANTOS, and DAVE JOSHUE ARAUZ CANTOS,

Plaintiffs,

-against-

SCALDAFIORE REALTY CORP, SANTINO
DIFIORE, JOSEPHINE MAZZOLA and
GINETTA MODICA,

Defendants.

X-----X

**AMENDED ANSWER TO
SECOND AMENDED
COMPLAINT AND
AFFIRMATIVE DEFENSES
AND COUNTERCLAIM**

Civil Action No.:
15-cv-5058 (MKB-RML)

Defendants, Scaldafiore Realty Corp., Santino DiFiore, Josephine Mazzola and Ginetta Modica by their attorney Paul E. Kerson, Esq., of the Law Offices of Leavitt & Kerson, Esqs., as and for their Answer and Affirmative Defenses state as follows, upon information and belief:

ANSWER

1. Defendants deny paragraphs 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 55, 56, 57, 59 and 60 of the Complaint.
2. Defendants admit paragraph 4 of the Complaint
3. Defendants deny information sufficient to form a belief as to the truth of paragraphs 1, 12, 18, 19, 20, 21, and 26 of the Complaint.
4. With respect to paragraphs 35, 42, 50, 54 and 58 of the Complaint Plaintiff repeats, reiterates and re-alleges certain allegations. For their Answers to these allegations Defendants respectfully refer the Court to their Answers above.

AFFIRMATIVE DEFENSES

5. Plaintiffs Juan Carlos Arauz Delgado, Jean Carlos Arauz Cantoz and Dave Joshue Arauz Cantos were independent contractors of Defendant Scaldafiore Realty Corporation.

6. Plaintiffs Juan Carlos Arauz Delgado, Jean Carlos Arauz Cantoz and Dave Joshue Arauz Cantos were not Employees of any of the Defendants.

7. Defendant Scaldafiore Realty Corporation owns premises 20-24 31st Street, Astoria, Queens County, NY 11105, an apartment house. As part of his compensation as an independent contractor of Scaldafiore Realty Corporation, Plaintiff Juan Carlos Arauz Delgado was given a reduced rental payment for apartment D-4 thereat in exchange for his services as an independent contractor. As an accommodation to plaintiff Juan Carlos Arauz Delgado, defendant Scaldafiore Realty Corporation also allowed Plaintiff Juan Carlos Arauz Delgado's sons, co-plaintiffs Jean Carlos Arauz Cantos and Dave Joshue Arauz Cantos to serve as independent contractors.

COUNTERCLAIM

8. This Court has jurisdiction over this Counterclaim pursuant to 28 U.S.C. 1367.

9. Plaintiff Juan Carlos Arauz Delgado rented Apt. D-4 at 20-24 31st Street, Astoria, Queens County, New York 11105. Plaintiff Juan Carlos Arauz Delgado's sons, Jean Carlos Arauz Cantos and Dave Joshue Arauz Cantos resided with him thereat.

10. On or about December 10, 2015, Plaintiff Juan Carlos Arauz Delgado mailed the keys to the subject apartment back to the Defendant Scaldafiore Realty Corp. and thus abandoned the subject apartment.

11. Before abandoning the subject apartment, Plaintiff Juan Carlos Arauz Delgado installed extra walls, extra doors, extra electrical wiring, extra heating, and extra plumbing in the subject apartment rendering the subject apartment illegal, unsafe, uninhabitable and unrentable until

such time as Defendant Scaldafiore Realty Corp. expend at least \$100,000 to repair the damage to the subject apartment caused by the Plaintiffs in violation of the New York City Building Code.

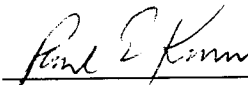
12. At the time the Plaintiff Juan Carlos Arauz Delgado abandoned the subject apartment on or about December 10, 2015, rent of \$10,750 was due up to and including January 31st, 2016 and \$10,850 for the period February 1st, 2016 to August 31st, 2016, the end date of the subject lease.

13. It will take Defendants Scaldafiore Realty Corp. at least four months to repair the subject apartment such that it will become rentable and habitable pursuant to the New York City Building Code. Thus, Defendant will lose an additional \$6,200 in rent due to the wrongful, unlawful construction in the subject apartment by the Plaintiffs.

14. Defendants extended to the Plaintiff Juan Carlos Arauz Delgado a preferential rent credit of \$13,649.64 because Plaintiff performed certain repair and maintenance work in the subject apartment house. Once the Plaintiff abandoned the apartment and ceased to perform the maintenance work, the preferential rent credit was thus cancelled, damaging Defendant Scaldafiore Realty Corp. in the sum of \$13,649.64.

WHEREFORE, Defendants demand Judgment dismissing the Complaint in its entirety and for Judgment on the Counterclaim in the sum of \$141,449.64 with interest from December 10, 2015, costs, disbursements, and attorney's fees in this action.

Dated: May 6, 2016
Forest Hills, NY



PAUL E. KERSON
Leavitt & Kerson
Attorneys for Defendants
118-35 Queens Blvd, 12th FL
Forest Hills, NY 11375
(718) 793-8822
Fax (718) 520-8544
E-mail: kersonpaul@aol.com

VERIFICATION

STATE OF NEW YORK)

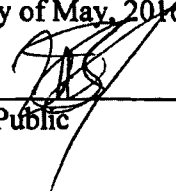
COUNTY OF QUEENS) ss.:

SANTINO DIFIORE, being duly sworn deposes and says:

I am the President of the Defendant Scaldafiore Realty Corp. I have read the foregoing Answer and Affirmative Answers and the same are the true to my own knowledge except those matters alleged to be upon information and belief and those matters I believe to be true.


SANTINO DIFIORE, as President of
Scaldafiore Realty Corp.

Sworn to before me this
24th day of May, 2016


Notary Public

ZAKARIA A ISSA
Notary Public, State of New York
Qualified in Queens County
No. 011S5014981
My Commission Expires 07/12/2019